

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

BOBBY DAVIS, BRENDA DAVIS,)	
and GEOFFREY DAVIS,)	
)	
Plaintiffs,)	8:11CV69
)	
v.)	
)	
BAMFORD, INC., and)	ORDER
NANCY MARET PACKER, Personal)	
Representative of the ESTATE)	
OF MICHAEL PACKER,)	
)	
Defendants.)	
_____)	

This matter is before the Court upon defendants' objections to plaintiffs' page-line deposition transcript designations, requesting a ruling on videotape depositions taken for use at trial (Filing No. 154), as well as objections listed in defendants' amended list of deposition testimony to be offered at trial, submitted following Court's order on plaintiffs' motion for partial summary judgment (Filing No. 182, at 3). The Court has also taken into account plaintiffs' supplemental notice of witness and evidence limitations in light of liability finding (Filing No. 185) and plaintiffs' supplemental notice - plaintiffs' witnesses and evidence post-pretrial rulings (Filing No. 188). Following are the Court's rulings on objections asserted by defendants.

Deposition of Richard Bevan-Thomas, M.D.

1. Page 20, Line 23 through Page 22, Line 10.

Objection on the basis of no proper, prior disclosure. The Court assumes that this objection is related to defendants' motion in limine regarding any reference at trial concerning any records or opinions that were not disclosed in a timely manner (Filing No. 165, with brief, Filing No. 166, at 3-4). The Court reserves ruling on this objection until plaintiffs have been heard regarding the motion in limine.

2. Page 22, Line 24 through Page 23, Line 14.

Objection on the basis of improper form and leading. Sustained to the extent that the Court strikes Page 22, Line 24 - Page 23, Line 6; otherwise, overruled.

3. Page 61, Line 8 through Line 14. Objection on the basis of lack of foundation. Overruled.

4. Page 63, Line 6 through Line 11. Objection on the basis of improper form and leading. Sustained; the Court strikes Page 63, Line 6 through Line 11.

Deposition of Bill Brecks.

1. Page 15, Line 10 through Line 17. Objection on the basis of improper form, and relevancy. Sustained; the Court strikes Page 15, Line 10 through Line 17.

2. Page 15, Line 18 through Line 22. Objection on the basis of relevancy. Sustained; the Court strikes Page 15, Line 18 through Line 22.

3. Page 15, Line 23 through Page 16, Line 1. Objection on the basis of relevancy. Overruled.

4. Page 16, Line 2 through Line 11. Objection on the basis of improper form, lack of foundation and relevancy. Sustained; the Court strikes Page 16, Line 2 through Line 11.

Deposition of Kerry Buser, M.D.

1. Page 4, Line 23 through Page 5, Line 12. Objection on the basis of improper form and relevancy. Sustained; the Court strikes Page 4, Line 23 through Page 5, Line 12.

2. Page 35, Line 19 through Page 36, Line 15. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

3. Page 36, Line 16 through Line 22. Objection form and foundation. Overruled.

4. Page 36, Line 23 through Page 37, Line 11. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

5. Page 37, Line 12 through Page 38, Line 6. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

6. Page 38, Line 7 through Line 17. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

7. Page 38, Line 18 through Page 39, Line 12. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

8. Page 39, Line 13 through Line 19. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

9. Page 39, Line 20 through Page 40, Line 1. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

10. Page 40, Line 2 through Line 14. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

11. Page 40, Line 15 through Page 41, Line 3. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

12. Page 41, Line 11 through Line 20. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

13. Page 41, Line 21 through Page 42, Line 14.

Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

14. Page 42, Line 15 through Line 23. Objection on the

basis of improper form, lack of foundation, and relevancy.

Overruled.

15. Page 42, Line 24 through Page 43, Line 4.

Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

16. Page 43, Line 8 through Line 17. Objection on the

basis of improper form, lack of foundation, and relevancy.

Overruled.

17. Page 43, Line 18 through Line 24. Objection on the

basis of improper form, lack of foundation and relevancy.

Overruled.

18. Page 43, Line 25 through Page 44, Line 1.

Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

19. Page 58, Line 2 through Line 14. Objection on the

basis of improper form, lack of foundation, and relevancy.

Overruled.

20. Page 58, Line 15 through Page 59, Line 4.

Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

21. Page 60, Line 2 through Line 16. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

22. Page 60, Line 17 through Page 61, Line 2. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

23. Page 61, Line 3 through Line 17. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

24. Page 61, Line 18 through Line 23. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

25. Page 63, Line 4 through Line 16. Objection on the basis of improper form, lack of foundation, and relevancy. Sustained; the Court strikes Page 63, Line 4 through Line 16.

26. Page 63, Line 17 through Line 19. Objection on the basis of improper form, lack of foundation, and relevancy. Sustained; the Court strikes Page 63, Line 17 through Line 19.

27. Page 63, Line 20 through Page 64, Line 11. Objection on the basis of improper form, lack of foundation, and relevancy. Sustained; the Court strikes Page 63, Line 20 through Page 64, Line 13.

28. Page 64, Line 14 through Line 20. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

Deposition of Ty Callahan, Ph.D.

1. Page 73, Line 18 through Line 24. Objection on the basis of improper form and lack of foundation. Overruled.

2. Page 73, Line 25 through Page 74, Line 19. Plaintiffs are no longer designating these lines (Filing No. 185, at 8).

3. Page 12, Line 9 through Line 15. Plaintiffs are no longer designating these lines (Filing No. 185, at 8).

Deposition of Dr. Andrew J. Cottingham.

1. Page 23, Line 16 through Page 24, Line 1. Objection on the basis of lack of foundation. Overruled.

2. Page 32, Line 17 through Page 33, Line 1. Objection on the basis of improper form and leading. Sustained; the Court strikes Page 32, Line 17 through Page 33, Line 1.

Deposition of Terry A. Davis, M.D.

1. Page 24, Line 1 through Line 16. Provisional objection, dependent on Court ruling on sudden loss of consciousness defense. Sustained; the Court strikes Page 24, Line 1 through Line 16.

2. Page 25, Line 1 through Line 18. Provisional objection, dependent on Court ruling on sudden loss of

consciousness defense. Sustained; the Court strikes Page 25, Line 1 through Line 18.

3. Page 55, Line 19 through Line 25. Objection on the basis of improper form. Overruled.

Deposition of Mike Gregg - plaintiffs do not now intend to call Mike Gregg as a witness (Filing No. 188).

Deposition of Scott Howe, M.D.

1. Page 4, Line 6 through Page 6, Line 7. Objection to as incomplete. The designated question is not followed by the answer. Overruled.

2. Page 9, Line 4 through Line 10. Objection on the basis of improper form and leading. Overruled.

3. Page 19, Line 7 through Line 17. Objection on the basis of lack of foundation. Overruled.

Deposition of Saqib H. Janjua.

1. Page 25, Line 17 through Page 26, Line 3. Objection on the basis of improper form and relevancy. Overruled.

2. Page 28, Line 6 through Page 29, Line 20. Objection on the basis of relevancy. Sustained; the Court strikes Page 28, Line 6 through Page 29, Line 20.

3. Page 30, Line 14 through Line 24. Objection on the basis of improper form and relevancy. Sustained; the Court strikes Page 30, Line 14 through Line 24.

4. Page 31, Line 1 through Line 3. Objection on the basis of relevancy. Sustained; the Court strikes Page 31, Line 1 through Line 3.

5. Page 31, Line 4 through Line 8. Objection on the basis of improper form and relevancy. Sustained; the Court strikes Page 31, Line 4 through Line 8.

6. Page 31, Line 9 through Line 11. Objection on the basis of relevancy. Sustained; the Court strikes Page 31, Line 9 through Line 11.

Deposition of Kenneth Moody.

1. Page 15, Line 17 through Page 20, Line 6. Objection on the basis of improper form, lack of foundation, hearsay, and relevancy. Sustained; the Court strikes Page 15, Line 17 through Page 20, Line 6.

2. Page 23, Line 24 through Page 24, line 22. Objection on the basis of lack of foundation, improper form, hearsay, and relevancy. Overruled.

3. Page 25, Line 24 through Page 26, Line 7. Objection on the basis of lack of foundation, and leading the witness. Sustained; the Court strikes Page 25, Line 24 through Page 26, Line 7.

4. Page 27, Line 22 through Page 28, Line 19. Objection on the basis of improper form, lack of foundation, and leading the witness. Sustained to the extent that the Court

strikes Page 27, Line 22 through Page 28, Line 8; otherwise, overruled.

5. Page 39, Line 3 through Line 14. Objection on the basis of hearsay, improper form, and lack of foundation. Plaintiffs are no longer designating these lines (Filing No. 185, at 2).

6. Page 40, Line 1 through Page 42, line 20. Objection on the basis of improper form, lack of foundation, and relevancy. Plaintiffs are no longer designating these lines (Filing No. 185, at 2).

Deposition of Nancy Packer - Nancy Packer will not be called as a witness (Filing No. 185, at 2).

Deposition of Laura Reinick

1. Page 18, Lines 1 through 13. Objection on the basis of improper form. Overruled.

2. Page 20, Line 5 through Page 21, Line 14. Objection on the basis of improper form, lack of foundation, and hearsay. Sustained to the extent that the Court strikes Page 20, Line 14 through Line 23; otherwise overruled.

3. Page 22, Line 21 through Page 23, Line 23. Objection on the basis of improper form, lack of foundation, and relevancy. Sustained; the Court strikes Page 22, Line 21 through Page 23, Line 23.

4. Page 23, Line 25 through Page 24, Line 21.

Objection on the basis of improper form, lack of foundation, and relevancy. Sustained; the Court strikes Page 23, Line 25 through Page 24, Line 21.

5. Page 27, Line 8 through Line 22. Objection on the

basis of improper form and relevancy. Sustained; the Court strikes Page 27, Line 8 through 22.

6. Page 28, Line 6 through Page 31, Line 11. Objection

on the basis of lack of foundation, improper form, and relevancy. Plaintiffs are no longer designating these lines (Filing No. 185, at 3).

7. Page 33, Line 1 through Line 15. Objection on the

basis of improper form and relevancy. Sustained; the Court strikes Page 33, Line 1 through 15.

8. Page 34, Line 14 through Page 36, Line 18.

Objection on the basis of improper form, lack of foundation, and relevancy. Sustained to the extent that the Court strikes Page 34, Line 22 through Page 36, Line 18; otherwise overruled.

9. Page 40, Line 2 through Page 41, Line 10. Objection

on the basis of improper form, lack of foundation, and relevancy. Plaintiffs are no longer designating these lines (Filing No. 185, at 4).

Deposition of Dr. Jacob Rosenstein.

1. Page 15, Line 22 through Line 24. Objection on the basis of improper form and leading. Overruled.

2. Page 24, Line 22 through Page 26, Line 5. Objection on the basis of improper form and foundation. Sustained to the extent that the Court strikes Page 24, Line 22 through Page 25, Line 5; otherwise overruled.

3. Page 37, Line 20 through Line 22. Objection on the basis of improper form and lack of foundation. Overruled.

4. Page 40, Line 16 through Line 19. Objection on the basis of lack of foundation. Sustained; the Court strikes Page 40, Line 16 through Line 19.

Deposition of Roger Schiedes - plaintiffs do not now intend to call Roger Schiedes as a witness (Filing No. 188).

Deposition of Shannon Shipp, Ph.D.

The Court has already ruled that any reference to a specific future rate of inflation in Dr. Shipp's testimony or expert report must be removed (Filing No. 155). The Court will now rule on any additional matters covered in defendants' asserted objections.

1. Page 12, Line 19 through Page 13, Line 15. Objection on the basis of improper form, lack of foundation, and speculation. Overruled.

2. Page 14, Line 17 through Line 23. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

3. Page 15, Line 14 through Page 16, Line 19. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

4. Page 18, Line 7 through Line 11. Objection on the basis of improper form, lack of foundation, and speculation. Overruled.

5. Page 18, Line 12 through Line 21. Objection on the basis of improper form, lack of foundation, and relevancy. Overruled.

6. Page 23, Line 11 through Line 24. Objection on the basis of improper form and hearsay. Sustained; the Court strikes Page 23, Line 11 through Line 24.

7. Page 27, Line 9 through Line 11. Objection on the basis of improper form and lack of foundation. Overruled.

8. Page 28, Line 5 through Line 9. Objection on the basis of improper form and lack of foundation. Overruled.

9. Page 28, Line 17 through Line 19. Objection on the basis of lack of foundation. Overruled.

10. Page 28, Line 20 through Line 24. Objection on the basis of lack of foundation. Overruled.

11. Page 30, Line 24 through Page 31, Line 5.

Objection on the basis of lack of foundation. Overruled.

12. Page 32, Line 1 through Line 15. Objection on the

basis of lack of foundation. Overruled.

13. Page 33, Line 25 through Page 34, Line 8.

Objection on the basis of lack of foundation. Overruled.

14. Page 34, Line 9 through Page 35, Line 2. Objection

on the basis of lack of foundation. Overruled.

15. Page 35, Line 3 through Line 8. Objection on the

basis of improper form (leading) and lack of foundation.

Overruled.

16. Page 39, Line 5 through Line 17. Objection on the

basis of lack of foundation. Overruled.

17. Page 39, Line 22 through Page 40, Line 2.

Objection on the basis of lack of foundation. Overruled.

18. Page 40, Line 13 through Page 41, Line 1.

Objection on the basis of lack of foundation. Overruled.

19. Page 41, Line 2 through Line 9. Objection on the

basis of lack of foundation. Overruled.

20. Page 41, Line 10 through Line 15. Objection on the

basis of lack of foundation and improper form. Overruled.

21. Page 42, Line 25 through Page 43, Line 3.

Objection on the basis of lack of foundation. Overruled.

22. Page 43, Line 17 through Line 25. Objection on the basis of lack of foundation and improper form. Overruled.

23. Page 46, Line 22 through Page 47, Line 4. Objection on the basis of lack of foundation and improper form. Overruled.

24. Page 47, Line 5 through Line 10. Objection on the basis of lack of foundation and improper form. Overruled.

25. Page 47, Line 11 through Line 18. Objection on the basis of lack of foundation and improper form. Overruled.

26. Page 47, Line 25 through Page 48, Line 4. Objection on the basis of improper form. Overruled.

27. Page 48, Line 5 through Line 9. Objection on the basis of lack of foundation and improper form. Sustained; the Court strikes Page 48, Line 5 through Line 9.

28. Page 48, Line 12 through Line 20. Objection on the basis of lack of foundation and improper form. Sustained; the Court strikes Page 48, Line 12 through Line 20.

29. Page 48, Line 24 through Page 49, Line 2. Objection on the basis of lack of foundation and improper form. Sustained; the Court strikes Page 48, Line 24 through Page 49, Line 2.

Deposition of Jan Weber - Jan Weber will not be called as a witness (Filing No. 185, at 2).

Deposition of Donald Wirth, M.D. - Donald Wirth will not be called as a witness (Filing No. 185, at 2).

IT IS ORDERED:

1) Defendants' request for ruling on videotape depositions taken for use at trial (Filing Nos. 154 and 182) is granted.

2) Plaintiffs are instructed to edit the videotape depositions in accordance with the Court's rulings listed above.

DATED this 21st day of June, 2012.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court